Filed 2/4/05 In re Ethan W. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

In re ETHAN W. et al., Persons Coming Under the Juvenile Court Law.	
SUTTER COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. MARGARET S. et al., Defendants and Appellants.	C046966 (Super. Ct. Nos. DPSQ 02-5843, DPSQ 02-5849, DPSQ 02-5850, DPSQ 02-5851)

Margaret S., the mother of Ethan W., Samantha S., Charles W., and Brianna W.; and Noel W., the alleged father of Ethan, appeal from orders of the juvenile court denying their petitions for modification and terminating their parental rights. (Welf. & Inst. Code, §§ 366.26, 388, 395.)[1] Daniel W., the

[1] Further undesignated section references are to the Welfare and Institutions Code.

presumed father of Brianna, appeals from an order terminating his parental rights.[2]

Appellants make multiple contentions of alleged prejudicial error in the dependency proceedings. We shall affirm the orders denying the petitions for modification filed by Margaret and Noel and the orders terminating the parental rights of Margaret, Noel and Daniel.

FACTS AND PROCEDURAL HISTORY

On December 9, 2002, the Sutter County Human Services Agency (HSA) filed original juvenile dependency petitions pursuant to section 300 on behalf of the now two-year-old Ethan; 13-year-old Samantha; 10-year-old Charles; and five-year-old Brianna.[3] The petitions alleged in part that the minors were at a substantial risk of suffering serious physical harm because of substance abuse by Margaret and Noel. The petitions also alleged that Daniel had just recently been released from prison.

The juvenile court sustained the petitions and adjudged the minors dependent children of the court. The court also denied Margaret reunification services. Thereafter, the court terminated services for Noel and Daniel. The court also ordered preparation of an adoption assessment.

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[2] Charles W., the presumed father of Samantha and Charles, is not involved in this appeal.

[3] Margaret has a fifth child, Haylee S., but her parental rights as to that minor were terminated on July 12, 2002, and Haylee is not involved in this appeal.

Ethan and Charles were placed together in Yuba City, while Samantha and Brianna were in the same foster care home in Sutter. As the respective foster mothers were best friends and participated in various events together, all four minors had regular contact with each other. The juvenile court found the minors constituted a sibling group.

An October 2003 adoption assessment by the State Department of Social Services (DSS) noted that the minors were doing well in their placements. Samantha and Charles indicated they would like to live with Margaret. The foster mothers reported that, after visits with appellants, each of the minors except Ethan manifested behavior problems. DSS opined that all four minors would benefit from adoption. According to DSS, each of the minors had "substantial emotional ties" to their prospective adoptive parents. Removal from their placements would be, in the opinion of DSS, "detrimental to the children's well being."

In December 2003, Margaret and Noel each filed petitions for modification, seeking either reunification services or return of the minors to parental custody.[4] Margaret and Noel alleged they had participated in various programs and maintained sobriety. Each also averred that modification was in the best interests of the minors due to the bonds existing among them and with their parents, and suggested that the minors should be together in parental custody. According to the petition filed

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[4] In early 2004, Margaret and Noel were married.

by Margaret, both Samantha and Charles had expressed a desire to live with Margaret.

HSA recommended termination of parental rights and adoption as the appropriate permanent plan for the minors. Although acknowledging that Margaret and Noel had made progress, the social worker did not believe reunification was in the best interests of the minors. According to the HSA, neither Margaret nor Noel had demonstrated they knew the minors very well. The social worker also opined that both Margaret and Noel were unaware of the minors' emotional needs.

In February and March 2004, clinical psychologist Don Stembridge conducted a psychological evaluation of Margaret and Noel, and all of the minors except Ethan. Samantha stated she wanted to live with Margaret and Noel. Although Charles did not want to live with Margaret and Noel, he interacted well with both of them during a visit observed by Stembridge. Brianna told Stembridge she wanted to return home. Brianna's observed visit with Margaret and Noel also went well.

Stembridge concluded that the three minors he had evaluated each appeared to be attached positively to Margaret, and that Samantha and Brianna appeared to enjoy an adequate attachment to Noel. The psychologist recommended increased visitation between the minors and Margaret and Noel. According to the psychologist, Charles appeared to be "the most troubled" of the minors about reunification. Stembridge also opined that, if visitation and family therapy went well, and the therapists agreed, then Samantha and Brianna could be returned to parental

custody. He also raised the possibility of Charles and Ethan reunifying with Margaret and Noel.

Stembridge observed that all of the minors "appear[ed] to be adequately bonded with each other." He recommended continuation of regular sibling visitation. Stembridge also estimated that six to eight months was required to determine if reunification would succeed.

At the hearing on the petitions for modification, Noel testified that he had seen Ethan every day for the first three months of Ethan's life, and was listed on Ethan's birth certificate as his father. Noel also told the juvenile court that he had completed parenting classes and a substance abuse treatment program and had maintained his sobriety. Noel was continuing to participate in programs. Noel and Margaret were residing successfully in a Salvation Army transitional housing program. Margaret testified that she had maintained her sobriety for nearly 14 months.

Social worker Ellen Williams testified that the minors were bonded strongly to each other. She believed the minors would be at risk if Margaret and Noel had a drug relapse. Williams did not believe that returning the minors to parental custody would be in their best interests, as they were enjoying the benefits of stable placements.

At the conclusion of the hearing on the petitions for modification, counsel for Margaret and Noel argued both parents had done well in services and that returning the minors to parental custody would be in the best interests of the minors.

In its May 20, 2004, ruling denying the petitions for modification, the juvenile court acknowledged that Margaret and Noel had established changed circumstances. However, the court found that modification would not be in the best interests of the minors. The court stated in part that " . . . the next inquiry is would the modification be in the best interests of the minor children? As I said, we've got four children in stable foster homes with families that don't, as far as I know, have the danger of relapse into drug abuse. Families, as far as I know, that have stability with regard to housing and employment. And I compare that to the danger -- that's probably not the best word to use -- of returning the children to parents who have been clean and sober as far as we know for about 17 months. But 17 months in a lifetime, and I realize it's not been full-time, but at least an adulthood of drug abuse and addiction, while it may seem like a lot to [Margaret and Noel], really isn't very much time. And I've heard testimony that the three older children love their mother, the two girls would like to come home with mom. The boy is leaning that way but not as sure about it. Partly because of his apprehension about [Noel] and perhaps all men in general. [¶] And then we've got Ethan who has bonded incredibly with his foster mother, and he refers to her as mommy, and he doesn't see [Margaret] very often, although the visits all seem to be appropriate. And I think I read in the file that the beginning of the visits are [*sic*] difficult because he doesn't want to leave his foster mother, but after a typical period of time he adapts and he enjoys his

visits, and then he goes back. Twenty months old I think is how old he is right now. [¶] So I guess the -- the real decision, that for the 388 petition, is [whether it would be] in the best interests of the children to remain where they are or to be returned to their parents given all of the factors that we discussed over the past two court days and the concerns that I have articulated here today. It's not in their best interests for me to return them under the 388 petition to their parents. It certainly doesn't make any sense to offer them services. We talked about that before. We['ve] got two weeks left before the deadline. And as was lamented on Tuesday, if we had gotten this hearing off the ground a lot sooner, we would have had some time to try something different, but we're out of time and we can't offer more services."

On the issue of whether adoption was the most appropriate permanent plan, counsel argued against termination of parental rights on the grounds that the minors were bonded strongly to Margaret and Noel and also enjoyed significant sibling bonds.

The juvenile court concluded that no exception to adoption applied to the proceedings. In making its determination, the court stated in part that " . . . the parents have been having regular visitation. It hasn't been frequent, at least not by my standard, but it's been regular, and it would have been more frequent if these parents had gotten on the ball a year ago, but they didn't, and the children would benefit from continuing the relationship with their parents. I think I've already implied that I think they don't apply. C doesn't apply. D doesn't

apply, and then E might apply. [¶] So let's look at E. There would be substantial interference with the child's sibling relationship, taking into consideration the nature and extent of the relationship, including but not limited to where the child was raised with a sibling in the same house, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interests, including the child's long term emotional interest as compared to the benefit of legal permanence through adoption. [¶] This isn't terribly helpful either because we do have a situation whereas of [*sic*] right now if adoption is likely under the current plan we're going to have siblings together. Maybe not all. Not always, but we're not sending four different children with four different families. There is some good reasons [*sic*] there for making an exception to 366.26, but the Court doesn't find that there is a compelling reason to do it."

The juvenile court found it likely the minors would be adopted and terminated the parental rights of Margaret, Noel, and Daniel.

DISCUSSION

I

Noel contends the juvenile court erred in failing to find that he was the presumed father of Ethan. Arguing the record contains substantial evidence for such a finding, Noel claims the court failed to conduct an inquiry into his paternity

status. In support of his contention, Noel relies in part on *In re Paul H.* (2003) 111 Cal.App.4th 753.

It is true that, as an alleged father, appellant enjoyed fewer rights than he would have possessed either as a biological or a presumed father. For example, an alleged father is not *entitled* to appointed counsel or reunification services. (*In re Paul H., supra,* 111 Cal.App.4th at p. 760.) This is so because the paternity status of an alleged father has not been established and he has not achieved status as a presumed father. (*Ibid.*)

In this case, Noel alleged that he was the presumed father of Ethan, but he did not ask for a determination of his status, and the juvenile court failed to make one. Pursuant to section 316.2, subdivision (a), the juvenile court was required to conduct an inquiry into the identity of all alleged or presumed fathers. But here, unlike in *In re Paul H., supra*, 111 Cal.App.4th at page 762, where the alleged father lacked counsel and did not receive reunification services, the court has appointed counsel for Noel, and also granted him services.

In *In re Paul H., supra,* 111 Cal.App.4th at page 762, this court concluded the alleged father was prejudiced by the juvenile court's failure to follow the procedures contained in section 316.2. Here, by contrast, Noel can show no prejudice. As the record reflects, Noel was accorded the rights of a presumed father throughout the proceedings. Noel has not argued that, if the court had made an explicit determination that he was the presumed father of Ethan, the outcome would have been

different. We conclude any error in failing to make that determination was harmless. (Cal. Const., art. VI, § 13.)

II

Margaret contends the juvenile court abused its discretion in denying her petition for modification pertaining to all four minors, and Noel claims the court abused its discretion in denying his petition, which related only to his child, Ethan. In support of their claims, Margaret and Noel cite evidence of changed circumstances and strong bonds existing between the minors and them. Margaret and Noel also argue the court was unaware that it had the discretion to offer them an additional period of services, and that circumstances existed justifying an extension of the reunification period.

Section 388, subdivision (a), provides that a parent of a dependent child may petition the juvenile court "upon grounds of change of circumstance or new evidence . . . for a hearing to change, modify, or set aside any order of court previously made . . . ." Section 388 permits modification of a dependency order if a change of circumstance or new evidence is shown and if the proposed modification is in the best interests of the minor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.)

When a petition for modification is brought after the termination of reunification efforts, the best interests of the child are the paramount consideration. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this stage of the proceedings, the juvenile court

looks to the child's needs for permanence and stability. (*Ibid.*)

The party petitioning for modification has the burden of proof by a preponderance of the evidence. And a modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 414-415.)

In denying the petitions for modification, the juvenile court acknowledged that Margaret and Noel had progressed in addressing their substance abuse and had therefore established changed circumstances. However, the court also emphasized properly that the linchpin of the analysis was the best interests of the minors. Expressing several concerns about the circumstances of Margaret and Noel, the court determined the best interests of the minors would not be promoted by granting the modification petitions.

The determination by the juvenile court was well within its discretion. As the record reflects, Margaret and Noel had made substantial progress, and their efforts are to be commended. But the record also suggests more time lay ahead for Margaret and Noel during which they would require additional services. In the meantime, the minors would continue to develop and bond even more strongly with their adult caregivers.

In attachments to their petitions, Margaret and Noel averred it was in the best interests of the minors to return them to parental custody or provide them with additional

services because the minors could be all together and because Margaret and Noel had benefited from services.

The difficulty with the attachments is their failure to allege pertinent facts in support of the belief that the best interests of the minors required reunification with Margaret and Noel. A prima facie showing requires the proffering of facts relevant to the claim made. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) Mere beliefs, without facts to support them, do not constitute prima facie evidence of the minors' best interests. (*Ibid.*) Here, it is not enough to assert, as both Margaret and Noel do, that the minors should be returned to them because Margaret and Noel have improved their situation. At the time of the hearing on the modification petitions, the minors had been out of appellants' custody for a substantial period of time. Moreover, the minors' caregivers expressed a willingness to adopt the minors. The petitions, therefore, are deficient because they contain few, if any, facts relating to the circumstances of the minors.

The briefs by Margaret and Noel emphasize their efforts to maintain their relationship with the minors, their visits with the minors and their strong ties to the minors in support of their claim that reunification with the minors was in their best interests, but they say little about the minors' circumstances and feelings, or about the possibility that, even after modification in the form of additional services, they might not be able to achieve reunification with the minors.

Most importantly, Margaret and Noel do not allege any facts that the minors' needs for permanence and stability would be promoted by an extended period of reunification or return to parents who had been unable to demonstrate only months before that the programs in which they had decided to participate had resulted in sufficient changes in their behavior to permit the minors to reside with them safely.

In *In re Kimberly F.*, cited by Noel, the appellate court warned against the juvenile court simply comparing the situation of the natural parent with that of a caretaker in determining a section 388 petition. It termed such an approach the "'simple best interest test.'" (56 Cal.App.4th at p. 529.) Instead, the appellate court found that determining a child's best interests under section 388 required an evaluation of a number of factors, including the seriousness of the reason for the dependency action, the existing bond between parent and child and caretaker and child, and the nature of the changed circumstances. (*Id.* at pp. 530-532.) The court suggested it was unlikely a parent who lost custody because of a drug problem could prevail on a section 388 petition, whereas in a "dirty house" case, which was present in *In re Kimberly F.*, the chances of success were greater. (*Id.* at pp. 531, fn. 9, 532.) In *In re Kimberly F.*, the court concluded the decision to deny the section 388 petition was based largely and improperly on the juvenile court judge's adoption of the "'narcissistic personality' rationale," which the judge had applied to the mother in that case. (*Id.* at pp. 524, 526-527, 532-533.)

In this case, in denying the section 388 petitions, the juvenile court did not discuss the factors analyzed in *In re Kimberly F., supra,* 56 Cal.App.4th 519. However, evidence of all of the critical factors contained in *In re Kimberly F.*, including the basis of the dependency action, the relationship between Margaret and Noel and the minors and the relationship between the minors and their caretakers, and the nature of the alleged changed circumstances, *was* before the court. Moreover, the court's extensive comments about the case suggest it considered carefully all pertinent circumstances. On the record before it, the court concluded that Margaret and Noel failed to sustain their burden. Under the abuse of discretion standard, we see no error in that determination.

We reject the claims by Margaret and Noel that the juvenile court erred in refusing to exercise its discretion to order an additional period of reunification services. It is true that at one point the court stated it could not "offer more services." But from an examination of all of the court's comments, it is apparent that the court did not believe the circumstances justified any such extension. We see no abuse of discretion in that determination.

The juvenile court was required by statute (§ 388) to focus on the minors' best interests in deciding whether to grant the petitions for modification. As we have seen, those interests consist of the minors' needs for stability and permanence. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Childhood cannot wait for a parent to establish readiness for parenting. (*In re Baby*

Boy L. (1994) 24 Cal.App.4th 596, 610.) Here, the minors had shown the ability to bond with adult figures. On the other hand, Margaret and Noel were still working on the problems that had contributed to the dependency proceedings. On this record, it is not surprising the court ruled the minors should not be forced to wait any longer.

Under the circumstances of this case, the juvenile court did not act arbitrarily, capriciously, or beyond the bounds of reason in denying the petitions for modification. The court's conclusion that the minors' needs for stability compelled denial of the petitions and served their best interests was reasonable and is supported by the record. (Cf. *In re Edward H., supra*, 43 Cal.App.4th at p. 594.) In sum, Margaret and Noel failed to make the necessary showing, as required by section 388, that a modification might promote the best interests of the minors.

III

Margaret contends the juvenile court erred prejudicially in failing to apply an exception to adoption based on her relationship with the minors. According to Margaret, the record reflects that she visited the minors regularly and the visits went well, such that termination of parental rights would be detrimental to the minors. Moreover, Margaret argues she and the minors enjoyed a significant relationship, one which should be preserved, and that they wanted to live with her.[5]

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[5] Presumed father Daniel W. adopts the argument by Margaret on the "beneficial relationship" exception to adoption.

"'At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]' [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

One of the circumstances under which termination of parental rights would be detrimental to the minor is: "The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).) The benefit to the child must promote "the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

The parent has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372-1373.) The juvenile court is not required to find that

termination of parental rights will not be detrimental due to specified circumstances. (*Id.* at p. 1373.) Even frequent and loving contact is not sufficient to establish the benefit exception absent significant, positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

In this case, as the record reflects, and the juvenile court found, Margaret maintained regular contact with the minors. But regular contact is not enough. Section 366.26 requires both a showing of regular contact *and* a separate showing that the child actually would *benefit* from continuing the relationship. *In re Autumn H., supra,* 27 Cal.App.4th 567, interprets the statutory exception to involve a balancing test (*id.* at p. 575), and both *In re Autumn H.* and *In re Beatrice M.* posit a high level of parental-type involvement and attachment. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; *In re Beatrice M., supra,* 29 Cal.App.4th at pp. 1418-1419.) Even assuming those decisions were wrong to apply a balancing test and overemphasized the importance of the parental role, the record here does not support Margaret's suggestion that the minors would benefit from continuing their relationship with Margaret just because the minors had spent much of their life in appellant's custody and because of the bond existing between them. (Cf. *In re Amanda D.* (1997) 55 Cal.App.4th 813, 821-822.)

Margaret suggests the record establishes the existence of a beneficial relationship between the minors and herself,

precluding a finding of adoptability. The juvenile court was authorized to conclude to the contrary. Evidence of a significant parent-child attachment by itself does not suffice. Instead, the record must show such benefit to the minor that termination of parental rights would be *detrimental* to the minor. (§ 366.26, subd. (c)(1)(A).) Here, as the court suggested, that showing was insufficient. Instead, there was evidence suggesting it was important for the minors to obtain the benefits of a stable placement. Moreover, the foster mothers reported that, after parental visits, each of the minors except Ethan displayed behavior problems.

In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, the juvenile court found that it was in the best interests of the minors to establish a guardianship, rather than terminate parental rights, so the minors would maintain their relationship with their mother. (*Id.* at p. 1533.) Affirming, the Court of Appeal held that substantial evidence supported the juvenile court's conclusion that terminating parental rights would be detrimental to the minors because their mother had maintained regular, beneficial visitation with them. (*Id.* at pp. 1533, 1534, 1537, 1538.)

In re Brandon C. is distinguishable from the proceedings here. The *In re Brandon C.* court found ample evidence of benefit to the minors of continued contact with their mother. (71 Cal.App.4th at pp. 1537, 1538.) Here, by contrast, the record supports the juvenile court's implied conclusion that there would not be sufficient benefit to the minors if their

relationship with Margaret were continued. As the record suggests, given their parents' lack of a stable lifestyle, the minors had a great need for stability and security, which only adoption could afford.

Margaret suggests that because she had maintained a significant parent-child relationship with the minors, which included regular contact, the circumstances of her case compare favorably with those found in other cases. We disagree. In *In re Casey D.* (1999) 70 Cal.App.4th 38, 51, cited by Margaret, the Court of Appeal failed to find an "exceptional case" where a beneficial relationship existed precluding adoption. Accordingly, the court in *In re Casey D.* affirmed the order terminating parental rights. (*Id.* at pp. 53, 54.) However, the court in *In re Casey D.* did recognize the possibility that a beneficial relationship may exist despite the absence of daily contact between parent and child. (*Id.* at p. 51.) Moreover, in *In re Amber M.* (2002) 103 Cal.App.4th 681, the record contained evidence suggesting the minors there enjoyed a significant, longstanding relationship with their mother. (*Id.* at p. 689.)

Here, although Margaret argues the evidence establishes a strong bond existed between the minors and herself, the record is not so unambiguous. Instead, it shows much ambivalence toward reunification on the part of Charles. Moreover, psychologist Stembridge believed the family required months of continued services.

The social worker did not believe termination of parental rights would be detrimental to the minors. In fact, the HSA

concluded that removing the minors from their adoptive placements would be detrimental to the minors. On this record, it is difficult to discern how ending their relationship with Margaret would be detrimental to the minors.

Here, the issue was as follows: In light of the minors' adoptability, would a continued relationship with Margaret benefit the minors to such a degree that it would outweigh the benefits the minors would gain in a permanent adoptive home? Substantial evidence in the record supports the juvenile court's implied answer in the negative. On the record before it, the juvenile court could have concluded, as it did impliedly, that only adoption, which is the preferred disposition (*In re Ronell A., supra,* 44 Cal.App.4th at p. 1368), would promote the best interests of the minors.

After it became apparent that Margaret would not reunify with the minors, the juvenile court had to find that an "exceptional situation existed to forego adoption." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 576.) In this case, on the contrary, the court determined that the minors would not benefit from continuing their relationship with Margaret to such a degree that termination of parental rights would be detrimental to them. Margaret had the burden to demonstrate the statutory exception applied. We conclude that Margaret failed to make such a showing. Therefore, the court did not err in terminating the parental rights of Margaret. (*In re Amanda D., supra,* 55 Cal.App.4th at p. 821.)

IV

Margaret and Noel claim the juvenile court erred prejudicially in failing to apply an exception to adoption based on the relationships the minors enjoyed with their siblings. Noting evidence in the record that demonstrates strong sibling bonds existed throughout the course of the minors' lives and during the dependency proceedings, Margaret and Noel argue the benefits the minors obtained from maintenance of their sibling relationships outweighed the benefits of adoption. They also allege that separate placements interfere with those bonds. Margaret, Noel, and Daniel W. have standing to assert the sibling-relationship exception to adoptability.[6] (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 948-951.)

The claim by appellants is premised on a recently enacted statutory exception to adoption contained in section 366.26, subdivision (c)(1)(E). Under that provision, effective January 1, 2002, the juvenile court may find a compelling reason for determining that termination of parental rights would be detrimental to the minor where "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a

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[6] Presumed father Daniel W. adopts the arguments by Margaret and Noel on the "sibling relationship" exception to adoption.

sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (Stats. 2001, ch. 747, § 3.)

Pursuant to subdivision (c)(1)(E) of section 366.26, the juvenile court is given the discretion to determine that termination of parental rights would be detrimental under the circumstances quoted above. To make such a determination, the court must find a "compelling reason." Moreover, the statute contains a number of criteria that the court may consider. But the court is not *required* by the statute to consider the applicability of the statutory exception. (Cf. *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.)

In this case, the juvenile court determined that termination of parental rights would not be detrimental to the minors based on the sibling relationships existing in this case. The court ruled impliedly that the relationships among the siblings were not so significant as to outweigh the benefits of adoption. Accordingly, as the court found explicitly, there was no "compelling reason" to apply the subdivision (c)(1)(E) exception.

The record supports the determination by the juvenile court that termination of parental rights would not be detrimental to the minors. It is true, as appellants argue, that the record contains evidence, primarily in the form of the bonding evaluation performed by psychologist Stembridge, suggesting the minors shared sibling relationships with each other. However,

Stembridge did not recommend attempting to find one placement for all four minors. Instead, he found only an adequate bond among the siblings and advocated continued regular contact among them. Moreover, the record also shows that the minors were transitioning together into adoptive placements that serve their best interests.

The California Supreme Court recently held that the juvenile court may reject adoption under the sibling-relationship exception only if it determines that adoption would be detrimental to the minor whose welfare is being considered. (*In re Celine R.* (2003) 31 Cal.4th 45, 49-50.) Here, it is indisputable that a sibling relationship among the minors existed. In fact, by recommending a referral to the Consortium for Children, HSA expressly recognized the importance of maintaining strong sibling ties. But before adoption can be rejected, the statute requires something more: the showing of a *substantial interference* with sibling relationships if adoption is chosen as the permanent plan. (§ 366.26, subd. (c)(1)(E).)

The record in this case does not demonstrate substantial interference with sibling relationships due to adoption of the minors. Moreover, considering the commitment of the foster parents to continue contact among the minors and the recommended referral, there is little reason to expect that adoption will create a diminution in the amount of contact the minors have had with their siblings in the past. Finally, the record suggests the minors would benefit greatly from adoption.

On the record before us, we cannot say that the juvenile court's determination was an abuse of its discretion. Under the circumstances presented, although there is no guarantee, it is likely the four minors will remain together in two separate placements and continue to visit each other. There was no error in the court's ruling that termination of parental rights was not detrimental to the minors.

DISPOSITION

The orders denying the petitions for modification and terminating parental rights are affirmed.

DAVIS, J.

We concur:

BLEASE, Acting P.J.

RAYE, J.